



ATTORNEY GENERAL OF TEXAS
GREG ABBOTT

August 30, 2005

Ms. Veronica Ocañas
Assistant City Attorney
City of Corpus Christi
P.O. Box 9277
Corpus Christi, Texas 78469-9277

OR2005-07941

Dear Ms. Ocañas:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 231454.

The City of Corpus Christi (the "city") received a request for information relating to a specified sexual harassment investigation. You claim that the submitted information is excepted from disclosure under section 552.101 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," and encompasses the doctrine of common-law privacy. Common-law privacy protects information if (1) the information contains highly intimate or embarrassing facts, the publication of which would be highly objectionable to a reasonable person, and (2) the information is not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). In *Morales v. Ellen*, the court addressed the applicability of the common-law privacy doctrine to files of an investigation into allegations of sexual harassment. See *Ellen*, 840 S.W.2d at 525. The investigation files in *Ellen* contained individual witness statements, an affidavit by the accused individual responding to the allegations, and the conclusions of the board of inquiry that conducted the investigation. See *id.* The court ordered the release of the affidavit of the person under investigation and the conclusions of the board of inquiry, stating that the public's interest was

sufficiently served by the disclosure of such documents. *Id.* In concluding, the *Ellen* court held that “the public did not possess a legitimate interest in the identities of the individual witnesses, nor the details of their personal statements beyond what is contained in the documents that have been ordered released.” *Id.*

When there is an adequate summary of the investigation, the summary must be released along with the statement of the accused, but the identities of the victims and witnesses must be redacted and their detailed statements must be withheld from disclosure. However, when no adequate summary exists, detailed statements regarding the allegations must be released, but the identities of witnesses and victim must still be redacted from the statements. In either case the identity of an individual accused of sexual harassment is not protected from public disclosure, as common-law privacy does not protect information about a public employee’s alleged misconduct on the job or complaints made about the employee’s job performance. *See Open Records Decision Nos. 438 (1986), 230 (1979), 219 (1978).* In this instance, the submitted information consists of an adequate summary of the investigation. Accordingly, we conclude that the city must release the summary of the investigation. In doing so, however, the city must withhold any information that would tend to identify the witnesses of alleged sexual harassment. *See Ellen*, 840 S.W.2d at 525. You must withhold the information in the adequate summary that we have marked under section 552.101 in conjunction with common-law privacy. We note that because the requestor is the alleged victim, information identifying the victim in this case is not excepted under section 552.101 and common-law privacy. *See Gov’t Code § 552.023(b)* (person or person’s authorized representative has special right of access, beyond right of general public, to information held by governmental body that relates to person and is protected from public disclosure by laws intended to protect person’s privacy interests). Therefore, if the city receives a future request for this information from an individual other than the requestor or her representative, the city should again seek our decision.

We also note that a portion of the submitted information may be subject to section 552.117 of the Government Code. Section 552.117(a)(1) excepts from public disclosure the present and former home addresses and telephone numbers, social security numbers, and family member information of current or former officials or employees of a governmental body who request that this information be kept confidential under section 552.024. Whether a particular piece of information is protected by section 552.117 must be determined at the time the request is received by the governmental body. *See Open Records Decision No. 530 at 5 (1989).* Therefore, pursuant to section 552.117(a)(1), the city must withhold the information we have marked if the employees or former employees elected under section 552.024, prior to the city’s receipt of this request, to keep that information confidential. The city may not withhold this information under section 552.117(a)(1) if the employees or former employees did not make a timely election.

In summary, the city must withhold the information in the adequate summary that we have marked under section 552.101 in conjunction with common-law privacy and the personal

information we have marked if section 552.117(a)(1) applies. The remaining submitted information must be released.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, upon receiving this ruling, the governmental body will either release the public records promptly pursuant to section 552.221(a) of the Government Code or file a lawsuit challenging this ruling pursuant to section 552.324 of the Government Code. If the governmental body fails to do one of these things, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at (877) 673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

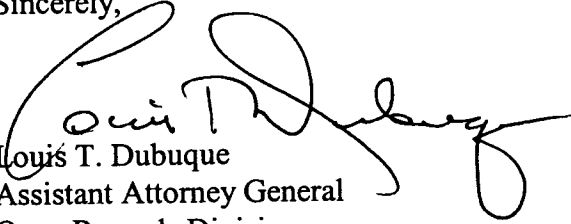
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Tex. Dep't of Pub. Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.—Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at (512) 475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code

§ 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,


Louis T. Dubuque
Assistant Attorney General
Open Records Division

LTD/seg

Ref: ID# 231454

Enc. Submitted documents

c: Ms. Petra Peña
849 James Street
Corpus Christi, Texas 78408
(w/o enclosures)